

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4160 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

N M CHAUDHARI

Versus

STATE OF GUJARAT

Appearance:

None present for Petitioner

None present for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/12/97

ORAL JUDGEMENT

1. The matter was called out for hearing in the first round then in the second round and lastly in the third round but none is present for the petitioner. Though two of the Additional Government Advocates are present in the Court but when they were called upon to make their submissions they have given out that the brief has not been given to them nor they have any instructions in the matter and further nobody is present on behalf of

the respondents to assist them and they cannot appear in the matter. In this case reply to the special civil application has been filed but nobody is here to make submissions on behalf of the respondents. I have perused the special civil application.

2. The petitioner, who was holding the post of Executive Engineer, was ordered to be compulsorily retired from the Government services under the order dated 29th June, 1987 in exercise of powers as conferred under the Rule 161 of the Bombay Civil Services Rules, 1959. This order has been impugned by the petitioner in this special civil application.

3. From the reply to the special civil application I find that there were adverse remarks in the Annual Appraisal Performance Report of the petitioner for the years 1982-83 and 1984-85. Even during the period 1985-86 his work was not found upto the mark. He was found to be disobedient and not attentive in discharging his duties. He was not following the Accounts Rules and his knowledge of Accounts Rules was found to be inadequate. He was placed under suspension vide order dated 29th June, 1987. The departmental inquiries were also pending against the petitioner in respect of the charges, namely, (a) negligence and carelessness on the part of the petitioner which resulted in over payment of Rs.18,768-34ps., (b) careless and negligence in performance of his duties which resulted in concrete lining work on the canal bank to be of inferior quality, (c) by not inviting public tender for purchase of pressure relief valves, which resulted in excess payment of approximately Rs.7.37 lacs, (d) he was chargesheeted for not maintaining the quality and for non-use of cement as per certain specification prescribed in the P.W.D. Manual, and (e) he is also charged for purchasing excess stationery and payment of excess amount in purchase of calculators. The respondents have given out details of adverse service record of the petitioner in the reply affidavit and those have not been specifically denied by the petitioner.

4. The object of compulsory retirement is to see that the inefficient and corrupt persons are removed but sufficient evidence was not available to dismiss or remove them from services after inquiry. They may be weeded out from the service with a view to secure efficiency in the public services and to maintain honesty and integrity amongst the service personnel. The Government is empowered and it is within its competence to compulsorily retire its officer in public interest

with a view to improve efficiency of the administration or to weed out the people who are of doubtful integrity or are corrupt but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service. The obligation of the government, while dealing with such matters, is to consider the entire record of the government servant including the latest reports. Compulsory retirement is not a punishment and the officer who is ordered to be compulsorily retire is entitled to all the pensionary benefits. The object underlying the provision as contained in Rule 161 of the Bombay Civil Services Rules, 1959 enabling the appointing authority to compulsorily retire an officer before he attains the prescribed age of superannuation is to energize the administration and make it more efficient by chopping of deadwood and to ensure that a key post is held by a person of undoubted ability and integrity.

5. In the case of State of Orissa vs. Ram chandra Das reported in 1996 (5) SCC 331, the Apex Court has held that the record of pending inquiry on conduct of an officer would also be material. The point is no more res integra that the compulsory retirement does not cast any stigma. The decision of the Government to compulsorily retire its officer is justified or not, normally such questions are beyond the scope of judicial review of this Court. In such matters, this Court has very limited judicial power of review. In the case of State of Orissa vs. Ram chandra das (supra) the Apex Court has held that the material question is whether the entire service record was considered or not. It is not for the Court/Tribunal to see whether the decision of the Government to compulsorily retire the Government servant is justified or not. It is for the Government to consider the same and take proper decision on that behalf. What is relevant is whether upon that state of record as a reasonable prudent man would reach that decision. Although the selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service.

6. In the presence of the material which has been brought on record of this special civil application, it cannot be said that no material whatsoever was there before the Government to form the opinion that the retention of the petitioner in Government service is not in public interest. Similarly upon that state of record

as a reasonable prudent man would reach that decision.

7. Taking into consideration the totality of the facts of this case, I do not find any illegality in the order impugned in this special civil application which calls for interference of this Court sitting under Article 226 of the Constitution.

8. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-